

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

|                                   |   |                        |
|-----------------------------------|---|------------------------|
| In the Matter of                  | ) |                        |
|                                   | ) |                        |
| OP LLC, Licensee, Station WPYQ831 | ) | File No.: EB-08-SE-647 |
|                                   | ) | Acct. No. 200832100067 |
| and                               | ) | FRN # 0008617136       |
|                                   | ) |                        |
| TVCC One Six Holdings LLC,        | ) | File No.: EB-08-SE-648 |
| Lessee, Station WPYQ831           | ) | Acct. No. 200832100068 |
|                                   | ) | FRN # 0016700031       |
|                                   | ) |                        |

**ORDER**

**Adopted: August 14, 2008**

**Released: August 14, 2008**

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”), OP LLC (“OP”), and TVCC One Six Holdings LLC (“TVCC”) for possible violation of sections 301 and 310(d) of the Communications Act of 1934, as amended,<sup>1</sup> and section 1.9030 of the Commission’s Rules<sup>2</sup> regarding long-term *de facto* transfer leasing arrangements.

2. The Bureau, OP, and TVCC have negotiated the terms of the Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether OP or TVCC possess the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Communications Act of 1934, as amended,<sup>3</sup> and sections 0.111 and 0.311 of the Commission’s Rules,<sup>4</sup> the Consent Decree attached to this Order **IS ADOPTED**.

<sup>1</sup> 47 U.S.C. §§ 301, 310(d).

<sup>2</sup> 47 C.F.R. § 1.9030.

<sup>3</sup> 47 U.S.C. § 154(i).

<sup>4</sup> 47 C.F.R. §§ 0.111, 0.311.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Bruce Olcott, Esq., Squire Sanders & Dempsey, LLP, 1201 Pennsylvania Avenue, NW, P.O. Box 407, Washington, DC 20044-0407.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief, Enforcement Bureau

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|                                   | ) |                        |

**CONSENT DECREE**

The Enforcement Bureau (“Bureau”), OP LLC (“OP”), and TVCC One Six Holdings LLC (“TVCC”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the investigation into whether OP and TVCC violated sections 301 and 310(d) of the Communications Act of 1934, as amended,<sup>1</sup> (“Act”) and section 1.9030 of the Commission’s Rules<sup>2</sup> (“Rules”) regarding long-term *de facto* transfer leasing arrangements.

**I. DEFINITIONS**

1. For the purposes of this Consent Decree, the following definitions shall apply:
  - (a) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
  - (b) “Adopting Order” means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
  - (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
  - (d) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
  - (e) “Compliance Plan” means the program described in this Consent Decree at paragraph 10.
  - (f) “Effective Date” means the date on which the Bureau releases the Adopting Order.

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<sup>1</sup> 47 U.S.C. §§ 301, 310(d).

<sup>2</sup> 47 C.F.R. § 1.9030.

- (g) “Investigation” means the investigation commenced by FCC staff’s January 8, 2008 Letter of Inquiry.<sup>3</sup>
- (h) “OP” means OP LLC and its predecessors-in-interest and successors-in-interest.
- (i) “Parties” means OP, TVCC, and the Bureau.
- (j) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (k) “TVCC” means TVCC One Six Holdings LLC and its predecessors-in-interest and successors-in-interest.

## II. BACKGROUND

2. OP is the licensee of an exclusive nationwide license in the 1670-1675 MHz Band, Station WPYQ831. On July 17, 2007, OP filed an application to lease its spectrum, by a long-term *de facto* transfer leasing arrangement,<sup>4</sup> to TVCC.<sup>5</sup> The Wireless Telecommunications Bureau granted that application on July 18, 2007.<sup>6</sup>

3. On August 31, 2007, OP filed a “Tribal Land Construction Certification and Demonstration” for Station WPYQ831, which provided that a “network and service offering has been launched and is operating that covers 86% of the population of the” White Mountain Apache Reservation (“Reservation”).<sup>7</sup>

4. On January 10, 2008, FCC staff issued a letter of inquiry (LOI) to OP regarding the provision of service to the Reservation.<sup>8</sup> OP responded to the January 10, 2008 LOI on January 25, 2008.<sup>9</sup> That response included the Declaration of E. Blake Hawk, Executive Vice President of OP, executed January 25, 2008 (“Hawk Declaration”). The Hawk Declaration provides, in part, “OP currently is providing DVB-H service free of charge to 86% of the population of the [Reservation] ... and was providing this service to 86% of the Reservation population prior to August 31, 2007.”<sup>10</sup>

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<sup>3</sup> Letter from Roger S. Noel, Chief, Mobility Division, Wireless Telecommunications Bureau, to Ari Q. Fitzgerald, Counsel for OP LLC (January 10, 2008), File No. 0003160142.

<sup>4</sup> See 47 C.F.R. § 1.9030.

<sup>5</sup> File No 0003108073, lease ID L000002305 (filed July 17, 2007).

<sup>6</sup> Report No. 3328 at 20 (July 25, 2007).

<sup>7</sup> File No. 0003160142.

<sup>8</sup> Letter from Roger S. Noel, Chief, Mobility Division, Wireless Telecommunications Bureau, to Ari Q. Fitzgerald, Counsel for OP (January 10, 2008), File No. 0003160142.

<sup>9</sup> Letter from Ari Q. Fitzgerald, Counsel for OP, to Roger S. Noel, Chief, Mobility Division, Wireless Telecommunications Bureau (January 25, 2008), File No. 0003160142.

<sup>10</sup> Hawk Declaration at 1.

5. On March 14, 2008, FCC staff issued a second LOI to OP requesting additional information regarding the provision of service to the Reservation.<sup>11</sup> OP and TVCC jointly responded to the March 14, 2008 LOI on March 21, 2008.<sup>12</sup> On August 14, 2008, OP and TVCC jointly filed an application requesting Commission approval of a long-term *de facto* transfer sublease agreement from TVCC to OP regarding the White Mountain Apache Reservation area.

### III. TERMS OF AGREEMENT

6. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

7. **Jurisdiction.** OP agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree. TVCC agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

8. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the Bureau releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

9. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the investigation. In consideration for the termination of said investigation, OP and TVCC agree to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in this investigation through the Effective Date of the Consent Decree, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against OP or TVCC concerning the matters that were the subject of the investigation. The Bureau also agrees that it will not use the facts developed in this investigation through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against OP or TVCC with respect to their basic qualifications, including their character qualifications, to be Commission licensees.

10. **Compliance Plan.** For purposes of settling the matters set forth herein, OP and TVCC agree to maintain a Compliance Plan related to future compliance with the Act, the Commission's Rules, and the Commission's Orders. The Plan will include, at a minimum, the following components:

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<sup>11</sup> Letter from Roger S. Noel, Chief, Mobility Division, Wireless Telecommunications Bureau, to Ari Q. Fitzgerald, Counsel for OP (March 14, 2008), File No. 0003160142.

<sup>12</sup> Letter from Ari Q. Fitzgerald, Counsel for OP, and Bruce A. Olcott, Counsel for TVCC, to Roger S. Noel, Chief, Mobility Division, Wireless Telecommunications Bureau (March 21, 2008). On July 17, 2008, OP and TVCC jointly filed a supplement to the March 21, 2008 response. See Letter from Ari Q. Fitzgerald, Counsel for OP, and Bruce A. Olcott, Counsel for TVCC, to James Schlichting, Chief, Wireless Telecommunications Bureau (July 17, 2008).

- (a) **Compliance Officers.** OP and TVCC will each designate an employee familiar with the Commission's rules, regulations and associated policies relating to spectrum leasing arrangements and agreements ("Compliance Officer"). OP has designated its Vice President, Internal Audits, as its spectrum leasing Compliance Officer. TVCC has designated its Executive Vice President as its spectrum leasing Compliance Officer. The designated spectrum leasing compliance officers will also review the FCC's leasing regulations on a quarterly basis to stay abreast of any new requirements, and will review all spectrum leasing arrangements and agreements before they are entered into by the parties and ensure that such arrangements and agreements comply with FCC rules and policies.
- (b) **Training.** Within ninety (90) days of the Effective Date, OP and TVCC shall conduct training sessions for all OP and TVCC personnel engaged in spectrum leasing ("Covered Employees") to inform them about the FCC rules and policies regarding spectrum leasing arrangements and agreements. In addition, all new Covered Employees of OP and TVCC will undergo such training within sixty (60) days of the commencement of their employment. OP and TVCC will also provide refresher training for all Covered Employees on at least an annual basis. In addition, OP and TVCC will each prepare and distribute a written compliance guide that sets forth company and Commission policies for spectrum leasing arrangements and agreements. OP and TVCC will update the guide, as necessary.
- (c) **Compliance Reports.** OP and TVCC shall file joint compliance reports with the Commission ninety (90) days after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date. Each report shall include a compliance certificate from an officer, as an agent of OP, and an officer, as an agent of TVCC, stating that the officer has personal knowledge that the company has established operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the officer's compliance certification. All reports shall be submitted to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. All reports shall also be submitted electronically to Kathryn Berthot at [kathy.berthot@fcc.gov](mailto:kathy.berthot@fcc.gov).
- (d) **Termination Date.** Unless stated otherwise, the requirements of this Compliance Plan will expire thirty-six (36) months from the Effective Date.

11. **Voluntary Contributions.** OP agrees that it will make a voluntary contribution to the United States Treasury in the amount of forty thousand dollars (\$40,000.00). TVCC agrees that it will make a voluntary contribution to the United States Treasury in the amount of forty thousand dollars (\$40,000.00). The payments will be made within thirty (30) days after the Effective Date of the Adopting Order. The payments must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and applicable FRN number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). OP and TVCC will also send electronic notification on the date said payment is made to Kathryn Berthot at [kathy.berthot@fcc.gov](mailto:kathy.berthot@fcc.gov).

12. **Waivers.** OP and TVCC waive any and all rights they may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this

Consent Decree and the Adopting Order, provided the Bureau Adopting Order adopts the Consent Decree without change, addition, modification, or deletion. OP and TVCC shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither OP, TVCC, nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and OP and TVCC shall waive any statutory right to a trial *de novo*. OP and TVCC hereby agree to waive any claims they may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

13. **Severability.** The Parties agree that if any of the provisions of the Adopting Order or the Consent Decree shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Adopting Order or Consent Decree, but rather the entire Adopting Order or Consent Decree shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly. In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

14. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which OP or TVCC does not expressly consent) that provision will be superseded by such Commission rule or Order.

15. **Successors and Assigns.** OP and TVCC agree that the provisions of this Consent Decree shall be binding on their successors, assigns, and transferees.

16. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission's Rules and Orders.

17. **Modifications.** This Consent Decree cannot be modified without the advance written consent of the Parties.

18. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

19. **Authorized Representative.** Each party represents and warrants to the others that it has full power and authority to enter into this Consent Decree.

20. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

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Kris Anne Monteith  
Chief  
Enforcement Bureau

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Date

\_\_\_\_\_  
E. Blake Hawk  
Executive Vice President  
OP LLC

\_\_\_\_\_  
Date

\_\_\_\_\_  
Serge G. Martin  
Executive Vice President  
TVCC One Six Holdings LLC

\_\_\_\_\_  
Date